

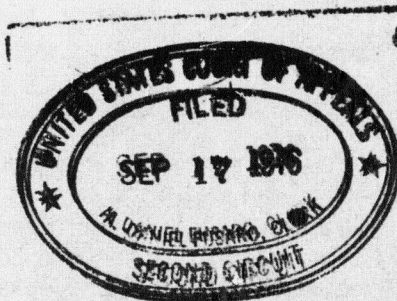
***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**









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#### STATEMENT OF FACTS

On April 7, 1972, Indictment 72 Gr. 407 was filed, charging Wright with conspiring to violate the narcotics laws, to wit, Sections 312, 841(a)(1), and 841(b)(1)(B) of Title 21, United States Code, and in two counts with the substantive violations of said sections. On May 1, 1972, Wright pleaded guilty to Count Two, which charged him with possessing with the intent to distribute 49,116 grams of marijuana, in violation of Sections 812, 841(a)(1) and 841(a)(1)(B) of Title 21, United States Code. On June 15, 1972, Wright was sentenced to three years imprisonment to be followed by two years special parole.

At no time was Mr. Wright advised of the mandatory special parole imposed by 21 U.S.C. § 841(b). He was not advised of this special parole at the time of arraignment, nor was he advised of it before the sentence of the Court was imposed.



ARGUMENT

21 U.S.C. § 841(b) (1) (B) provides in part:

"Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment."

21 U.S.C. § 841(c) provides in part:

"A special parole term provided for in this section or in section 845 of this title shall be in addition to, and not in lieu of, any other parole provided for by law."

Rule 11 of the Federal Rules of Criminal Procedure provide that the Court shall not accept a guilty plea without first addressing the defendant personally and determining that the plea was made voluntarily with an understanding of the nature of the charge and the consequences of the plea. The Supreme Court declared in McCarthy v United States, 394 US 459, 22L Ed 2d 418, 89 S Ct. 1166, (1969), noncompliance with the rule constitutes reversible error.

The entire arraignment and sentencing transcripts have been attached to the brief as an appendix.

During the course of the arraignment, the Court advised Mr. Wright of the consequences of his plea as follows:

"Q Do you realize that by this plea of guilty you subject yourself to a possible punishment of not more than



five years and a fine of \$15,000, or both a prison term of not more than five years and a fine of not more than \$15,000, or a combination of a lesser term of years and a lesser amount of fine than \$15,000? Do you understand that?

A Yes, I do."

[Page 7 of Appendix]

There is no other reference to any other consequence of the plea at the arraignment.

Not only did Judge Sylvester J. Ryan fail to advise Mr. Wright of the mandatory special parole, but based on the statement of the Judge at sentencing, it is reluctantly submitted that the Judge himself was unaware of the law. The following discussion took place:

"...I have given due consideration for the fact that you plead guilty. I have come to the conclusion that you should receive a sentence of a term of three years.

The defendant is sentenced to a term of three years and he is remanded.

What does the defendant do on the other counts?

MR. LA PARDE: The Government has no objection to a motion to dismiss the open counts, your Honor.

THE COURT: Do you move to dismiss them on consent?

MR. BISHOPP: I move to dismiss --

MR. LA PARDE: I consent.



THE COURT: You consent?

MR. LA PARDE: Yes, your Honor.

THE COURT: On the consent of the Government, the other counts of the indictment to which this defendant has pled guilty are dismissed.

The sentence on Count 2 is a term of three years imprisonment and the defendant is remanded.

I don't think there is any mandatory parole with respect to Marijuana.

MR. BISHOPP: I thought there was a two year parole, your Honor.

THE COURT: If there is, I impose a mandatory two year parole sentence in addition to the three years imprisonment. The defendant is remanded.

MR. BISHOPP: I am sorry, your Honor, I didn't understand that.

THE COURT: The sentence is three years and he has a mandatory parole of two years after that under the statute.

MR. BISHOPP: Thank you, your Honor."

[Pages 21 and 22 of Appendix]

This Court itself stated in Michel v. United States, 507 461 (2nd Cir. 1974) "... the imposition of special parole is a direct consequence of a guilty plea and is therefore within the mandate of Rule 11... and that the defendant not only should be advised that it will be imposed, but also should be asked by the court if he understands the fact." (emphasis supplied). That is precisely what did not happen here.



The following appellate courts have held that the failure of the District Court to advise a defendant of mandatory special parole in a drug offence under 21 U.S.C. § 841, required that the conviction be vacated, and the case remanded to allow the defendant to plead anew.

In Roberts v. United States, 491 F.2nd 1236, (3rd Cir. 1974), the defendant plead guilty to a charge of distribution of heroin. The court held that the special parole term was a consequence of the plea and the failure of the Court to advise the defendant thereof, required reversal and an opportunity for the defendant to plead anew.

In United States v. Richardson, 483 F.2nd 516, (8th Cir. 1973), the defendant plead guilty to a charge of distribution of heroin. The court held that the mandatory special parole term was a consequence of his plea and that without him being advised of it, his plea was not entered with Mr. Richardson understanding the consequences of his plea. Accordingly, the court reversed the conviction and remanded with instructions to allow the defendant to plead anew to the charges.

In United States v. Wolak, 510 F.2d 164, (6th Cir. 1975), the defendant plead guilty to a conspiracy count included in a six count indictment charging him with violation of 21 U.S.C., § 801. In addition to the conspiracy penalty, there was a statutorily mandated parole term of at least three years if any term of imprisonment is imposed. 21 U.S.C. § 841 (b)(1)(A), 846.



The Court of Appeals held that even though the District Judge did mention that there was a special parole term, that an examination of the transcript lead the court to conclude that the defendant did not understand the mandatory nature and length of the parole term. Consequently, the court reversed the conviction, vacated the sentence, and allowed the defendant to plead anew.

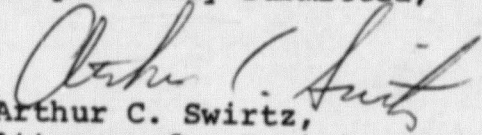
In United States v. Yazbeck, 524 F.2d 641, (1st Cir. 1975), the defendant plead guilty to a charge of intentionally distributing cocain. Although the prosecutor did mention that there was a special parole term during the course of the arraignment, the court held that there was no affirmative indication in the record that the defendant understood the penalty provided by 21 U.S.C., § 841. Therefore, the conviction was reversed, the case remanded with direction to vacate the conviction, and the defendant was allowed to plead anew to the indictment.



RELIEF

Wherefore, Mr. Glen Frederick Wright, Petitioner-Appellant, respectfully requests this Court to reverse the District Court and to remand this case to the District Court with directions to vacate the judgment of conviction and sentence, to vacate the plea of guilty, and to afford Appellant an opportunity to plead anew to the indictment.

Respectfully submitted,

  
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APPENDIX



ARRAIGNMENT TRANSCRIPT



W

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA

vs.

72 Cr. 407

GLEN FREDERICK WRIGHT,

Defendant.

---

Before:

HON. SYLVESTER J. RYAN,

District Judge.

New York, N. Y.,  
May 1, 1972.

APPEARANCES:

WHITNEY NORTH SEYMOUR, JR., ESQ.,  
United States Attorney,  
For the Government;

GERALD A. FEFFER, ESQ.,  
Assistant United States  
Attorney, of counsel.

EARLE BISHOPP, ESQ.,  
Attorney for Defendant



THE CLERK: Glen Frederick Wright.

MR. FEFFER: Your Honor, this is a three-count indictment charging possession with intent to distribute marijuana. I believe that defense counsel has recieved a copy of the indictment.

MR. BISHOPP: I have a copy of the indictment. At this time, your Honor, I would like to enter a plea of guilty to count 2 of the indictment. I have discussed this matter with the district attorney and he has agreed to have the defendant plead guilty to count 2.

THE COURT: Have you filed a notice of appearance?

MR. BISHOPP: I filed a notice of appearance before the magistrate.

THE COURT: The pleas of guilty will be taken at the end of the call of the calendar. Would it be convenient for you to wait?

MR. BISHOPP: Yes, your Honor.

THE COURT: We will take it up at the second call of the calendar.

(Adjourned to Second Call.)

- - -

THE COURT: This is Glen Frederick Wright. This defendant is going to enter a plea of guilty to count 2 of



the indictment.

MR. BISHOPP: Yes.

THE COURT: How many counts are there in this indictment?

MR. FEFFER: Three, your Honor.

THE COURT: This plea of guilty to count 2 is to cover all counts?

MR. BISHOPP: Pardon me?

THE COURT: You are entering a plea of guilty to count 2 to cover all the counts of the indictment?

MR. BISHOPP: Yes.

THE CLERK: Your Honor, that is the state court practice. The application should be to count 2 only.

THE COURT: Yes, the count 2 only, and on the day of sentence there will be a motion to dismiss.

THE CLERK: Glen Frederick Wright, the second count of this indictment charges on or about the 11th day of January, 1971, you unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I controlled substance, to wit, approximately 49,116 grams of marijuana.

Mr. Wright, do you understand the charge?

THE DEFENDANT: Yes, sir.

THE CLERK: And how do you plead, guilty or not guilty?



THE DEFENDANT: Guilty.

THE CLERK: The defendant offers to plead guilty to count 2 only, your Honor.

THE COURT: Did you consult with your client about this case?

MR. BISHOPP: Yes, I did. I consulted several times with him.

THE COURT: Did you tell him anything about the significance of this plea of guilty which he is about to enter?

MR. BISHOPP: Well, there are some extenuating circumstances in this case --

THE COURT: No; did you explain to him his constitutional rights?

MR. BISHOPP: Yes. I explained to him the penalty and I explained everything to him about it.

BY THE COURT:

Q How old are you, Wright?

A Twenty-eight.

Q And where were you born?

A In the state of Michigan.

Q How long have you lived in the United States?

A All my life.

Q Have you lived in New York in recent years?



A Yes, I have lived here.

Q How long have you lived in New York?

A About 4 years. I presently reside in Flint, Michigan.

Q Where?

A In my home town in Michigan.

Q Where in Michigan?

A Flint.

Q How far did you go in school?

A Well, I got a GED from high school and I also have been taking --

Q What does the GED mean, an equivalency certificate?

A Yes.

Q When did you get that?

A 1962, I believe

Q What else have you got by way of education?

A Taking business courses in junior college

Q What kind of courses do you take?

A Marketing, advertising, retailing.

Q How far did you go there and when did you stop?

A Well, I didn't enter college on a full-time basis; I just take courses, you know, for my own interest, you know, along the lines of business.

Q Are you a war veteran?



A No, sir. I volunteered for the draft but it was rejected.

Q Your lawyer tells me that you want to plead guilty to count 2 of the indictment, Indictment 72 Cr. 407.

A That's exactly what I want to do.

Q Count 2 of the indictment alleges or charges that on or about the 11th day of January, 1972, in this district, you unlawfully - that is against the law - wilfully - that is intentionally - and knowingly - that is with full knowledge of what you were doing, did possess with intent to distribute a Schedule I controlled substance, to wit, 49,116 grams of marijuana in violation of the laws of the United States.

A Yes, sir.

Q Why do you want to plead guilty to this count?

A Why?

Q Yes.

A I am guilty.

Q Do you realize that by this plea of guilty you subject yourself to a possible punishment of not more than five years and a fine of \$15,000, or both a prison term of not more than five years and a fine of not more than \$15,000, or a combination of a lesser term of years and a lesser amount of fine than \$15,000? Do you understand that?

A Yes, I do.



Q Has anybody made any promises of any kind as to what the sentence would be?

A No, sir.

Q I make you no promises of any kind because I do not know what the sentence is going to be. Very frankly, this is a very large quantity of marijuana with which you are charged with possessing or with having in your possession with intent to distribute.

Do you understand that in law you are presumed to be innocent and the burden is on the Government to prove you guilt beyond a reasonable doubt to the satisfaction of a jury?

A Yes, sir.

Q And by your plea of guilty you say, "I am guilty and I do not wish a trial, and I throw myself on the mercy of the court, admitting my full guilt to this crime"?

A Yes, sir.

Q And by doing that you waive your right not only to a jury trial, but you waive particularly your right to having the witnesses who would testify against you come in open court, with an opportunity give to you to examine and cross-examine those witnesses either by yourself or your attorney. Do you understand that?

A Yes, sir.

Q And you also waive your right to appear and testify



in your own behalf if you desire to do so?

A Yes, sir.

Q And you waive your right, finally, to a trial by a jury where the Government is required to prove your guilt beyond a reasonable doubt to the unanimous vote or the unanimous satisfaction of each and every one of those twelve jurors?

A Yes, sir.

Q Has anybody threatened or coerced you in any way to take this plea?

A Pardon me?

Q Has anybody forced you or coerced you or threatened you --

A No, sir.

Q -- which led you to take this plea of guilty?

A No, sir.

Q Do you understand what is going on now?

A Yes, sir.

Q Do you want to ask me any questions whatsoever concerning your plea of guilty or the proceeding that is now being conducted?

(Defendant confers with Mr. Bishopp.)

A No, I am pleading guilty.

THE COURT: All right. The clerk may take the



plea. I find it to be voluntarily and knowingly entered by this defendant without any promise or inducement of any kind.

MR. BISHOPP: If your Honor please, I assume it will take some time for a presentence report --

THE COURT: Is this man on bail?

MR. FEFFER: Yes, sir.

THE COURT: It will take about five or six weeks for a report.

MR. BISHOPP: I asked the probation officer if he could make it June 15th.

THE COURT: June 15th at 9:30 for sentence.

MR. FEFFER: Your Honor, the Government would suggest that the Court make some inquiry in terms of the facts of what transpired.

THE COURT: Just give me a chance, counselor.

MR. FEFFER: I am sorry. I thought the plea of guilty was accepted.

THE COURT: Yes, the guilty plea is accepted. I am not going to inquire into the facts with him. He appears to be entirely conversant with the charge and the situation. I read it to him and I think he has been asked enough questions.

MR. FEFFER: Your Honor, I base my comment on Rule 11 where it refers to a factual basis --



THE COURT: The factual basis is that he knows; he is an intelligent man; he knows the charge and he has admitted his guilt. What more factual basis do you want?

MR. FEFFER: Fine your Honor.

BY THE COURT:

Q Do you know what you did, what you are charged with doing here?

A Marijuana.

Q Possession of marijuana with intent to distribute it in violation of law?

A Yes, sir.

Q Willfully, knowingly and unlawfully?

A Yes, sir.

THE COURT: Are you satisfied now?

MR. FEFFER: I am, your Honor.

THE COURT: The sentence will be in Rool 1506 on June 15th at 9:30. Be there promptly at that time.

MR. BISHOPP: I will keep him advised of that.

THE COURT: I want you before you leave to go up and see the Probation Department. They will ask you some questions about yourself. I would like to know something about you when you come up for sentence --



MR. BISHOPP: The bail, I assume, will be continued, your Honor?

THE COURT: Wait a minute. I don't want you to lie to the probation officer. If he asks you some questions and if you don't want to answer, don't answer them, but don't lie. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: If you tell them anything, tell them only the turth.

THE COURT: Is bail continued?

MR. FEFFER: The Government consents, your Honor.

THE COURT: All right, bail is continued.

MR. BISHOPP: Thank you , your Honor.

MR. FEFFER: Thank you, your Honor.

( Adjourned to June 15, 1972 at 9:30 a.m.)



SENTENCING TRANSCRIPT



W

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA

vs.

GLEN FREDERICK WRIGHT,

Defendant.

72 Cr. 407

---

Before:

HON. SYLVESTER J. RYAN,  
District Judge.

New York, N.Y.,  
June 15, 1972.

APPEARANCES:

WHITNEY NORTH SEYMOUR, JR., ESQ.,  
United States Attorney,  
For the Government;  
CARTER LaPRADE, ESQ.,  
Assistant United States  
Attorney, of counsel.

EARLE J. BISHOPP, ESQ.,  
Attorney for Defendant



THE COURT: You are Glen Frederick Wright?

THE DEFENDANT: Yes, sir.

THE COURT: You are now before the Court for sentence following your plea of guilty to Count 2 of Indictment 72 Cr. 407, which charges you with possession of marijuana, with intent to distribute, in violation of the laws of the United States.

I will first hear from your attorney, and then I will hear from the United States Attorney, and then you may make any statement you desire before sentence is pronounced against you.

All right, Mr. Bishopp, I will hear from you.

MR. BISHOPP: Your Honor, the defendant pled guilty to Count 2 of the indictment. There are two other counts of the indictment which I understand are to be withdrawn or dismissed by the Assistant.

Now, Mr. Wright-- I haven't had the benefit of the probation report, but I would like to give some of the background of Mr. Wright, in that from his childhood he has been rather -- well, he has had a rather disappointing childhood, because when he was two months old his mother and father were divorced, and then later on his mother married again. She met Mr. Fred Wright, who adopted the defendant and gave him his name.



Since that time two children were born to this union, and the defendant here finally realize that he was sort of on the outside. The other two children were given all the consideration, and when he was fifteen years old, between twelve and fifteen, he ran away from home several times, and finally he was committed to a home, the St. Francis Home.

And from there on he had various experiences in which he became an embalmer and worked for an undertaker, and drove an ambulance, and at one time he was a police officer in Arizona, from which he resigned because he felt he could not stay on with that activity.

And then he became involved with a girl, and finally he was married to the girl, and from who he has been divorced, and came to New York and worked as a bartender off and on for about three years. And then he left New York and went back to Michigan where his mother and father resided and always have been.

And since that time -- well, within the past year he has met a girl to whom he is going to be married in July. And he is working in Michigan in a gas station, and his father, who is in business in Davison, Michigan --

THE DEFENDANT: No, in Flint.

MR. BISHOPP: His business is in Flint and his



residence is in Davison. And his father now has asked him to come into this business with him.

So that what I want to say is that the defendant has finally come to realize and come to the position where he feels he has a sufficiently responsible place in the community. And he says that he has finally come to realize that the only thing for him to do is to be a good citizen. And, therefore, I think that I am satisfied that he is sincere in this regard and he is going to try to become a useful citizen.

And I would also like to state, in regard to the violation, he, at the time that the arrest was made, and at the time the statement was made to the officers, he agreed, at the request of the District Attorney and the officers, to cooperate with the authorities in helping them in securing some violations of the matter. He tried but was unable to do anything further.

And so I think that he is an intelligent person and has come to realize what he must do.

Now, I believe the Assistant feels that he is willing to advise the Court as to the matter of his cooperation.

Now, he is the only person who has been charged with any crime in this matter. The people who were with him and got him into this thing are not present, so he is the



only person who has been finally charged with this matter.

I feel that if he is given an opportunity he will be -- he will do what is right by everybody. Further than that, he wants to say something.

THE COURT: We will hear from him after I hear from the United States Attorney.

MR. LA PARDE: Your Honor, the Government has nothing to add to the presentence report, other than to elaborate on Mr. Bishopp's remarks concerning the defendant's cooperation.

The defendant did offer his cooperation to the New York Joint Task Force who arrested him. These officers have told me that it was their opinion that Mr. Wright attempted to give whatever assistance he could, but the information that he had was not significant, and he did not contribute to make any cases. In other words, he did the best he could under the circumstances.

THE COURT: Have you any recommendation to make of any kind?

MR. LA PARDE: No, your Honor, just to elaborate on that point?

THE COURT: Glen Frederick Wright, you may make any statement you desire before sentence of the Court is



pronounced against you.

THE DEFENDANT: Well, the only thing I can say, your Honor, is that I hope you consider probation in this matter.

THE COURT: Well, you have been running wild for a long time. You have children that you brought into this world that you don't support.

THE DEFENDANT: Pardon me?

THE COURT: You have children that you brought into this world that you don't support.

THE DEFENDANT: No, sir, I do support them.

THE COURT: This report is to the contrary. One time you were giving \$65 a month to one child's support, but you haven't been for some time.

Your problem is not due to your stepfather, who apparently is a good man and has tried to do everything he could to help you, and he is willing to help now. The difficulty with you is that you are just going to make an easy way in life and make easy money.

You occasionally were using drugs, cocaine and heroin, and in the past you have also used marijuana and hashish.

The circumstances surrounding your arrest on this particular crime to which you pled guilty indicated you must receive a prison sentence.



You have been associated with people on West 114th Street, which has long been known as a center for the distribution of cocaine, heroin and marijuana. The quantities that you were dealing with here of marijuana were exceptionally large. The particular quantity that you negotiated to sell to an undercover agent involved an exchange of money, of approximately \$7,000. That's not a small quantity.

The total quantity found in your possession and found in the apartment of one that you associated with ran up to a total of sixty-four pounds that were found in the apartment, and you also had an additional quantity at the time of your arrest.

You were not a small-time dealer, and this transaction upon which you are now being prosecuted was not the only one in which you were involved. You are no neophyte in this illicit marijuana traffic. You were dealing in exceptionally large quantities.

The sources available to the Government would indicate that you have been dealing in this marijuana in exceptionally large quantities for a period of time, and that you were familiar with many of the marijuana peddlers in large quantities in various cities throughout the country.

In addition, you were well known up at 116th Street in this restaurant, which shows that you had contact



with suppliers or large quantities of cocaine and heroin.

I have gone over this case very carefully, and I have given you due consideration for any assistance you might have been able to give the Government. It is true that you did offer to give assistance but you couldn't do it. I have given due consideration for the fact that you pled guilty. I have come to the conclusion that you should receive a sentence of a term of three years.

The defendant is sentenced to a term of three years and he is remanded.

What does the defendant do on the other counts?

MR. LA PRADE: The Government has no objection to a motion to dismiss the open counts, your Honor.

THE COURT: Do you move to dismiss them on consent?

MR. BISHOPP: I move to dismiss --

MR. LA PRADE: I consent.

THE COURT: You consent?

MR. LA PRADE: Yes, your Honor.

THE COURT: On the consent of the Government, the other counts of the indictment to which this defendant has pled not guilty are dismissed.

The sentence on Count 2 is a term of three years imprisonment and the defendant is remanded.

I don't think there is any mandatory parole with



respect to Marijuana.

MR. BISHOPP: I thought there was a two year parole, your Honor.

THE COURT: If there is, I impose a mandatory two year parole sentence in addition to the three years imprisonment. The defendant is remanded.

MR. BISHOPP: I am sorry, your Honor, I didn't understand that.

THE COURT: The sentence is three years and he has a mandatory parole of two years after that under the statute.

MR. BISHOPP: Thank you, your Honor.



Danita M. Riker  
Danita M. Riker, Notary Public  
Genesee County, Michigan  
My commission expires: 11-26-79